Peter ak Merupi @ Masnor bin Abdullah v Public Prosecutor

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COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO Q-05–132 OF 2008
ABU SAMAH, SYED AHMAD HELMY AND AZIAH ALI JJCA
21 JUNE 2012

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Criminal Law — Penal Code — s 300 — Murder — Appeal against conviction and sentence — Circumstantial evidence — Whether trial judge erred in convicting appellant in reliance on circumstantial evidence — Whether evidence pointed irresistibly to appellant's guilt — Whether trial judge erred in taking into consideration appellant's conduct at time of his arrest — Whether appellant gave any explanation as to why he left apartment in a hurry — Whether appellate court should disturb findings of fact — Whether appeal should be allowed

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The body of Lee Ing Mui ('the deceased') was found lying on the ground in the back portion of a three-storey building, situated in Kuching. The deceased, who was staying on the second floor of the building, had rented out a room in her apartment to a couple ('the tenants'). According to the evidence adduced by the prosecution the appellant, a former tenant, was in the deceased's apartment on the date of the incident. The tenants testified that when they left for work on 8 March 2003 the deceased was alone in her room, but when they returned from work at about 2 am, the appellant had opened the door to the apartment for them. The appellant's panicky look and hasty departure caused the tenants knock on the deceased's room door, but there was no answer. The traces of blood they found in the flat also made them suspicious enough to contact the police. The Chief Inspector, who arrived at the apartment ('PW4'), testified that he forced the deceased's room door open but did not find the deceased in her room. PW 4 also found a pool of blood and a mop in the room, which had been ransacked. The deceased's body was later found downstairs in the back of the building. An investigation was conducted at the scene of the crime and among the items discovered by the investigation officer ('the IO') was a piece of wood about two feet in length ('the piece of wood'), which was most probably the murder weapon. The pathologist who performed the post mortem confirmed that the cause of death was the head injury caused by impact with severe force from a hard object such as the piece of wood. Approximately 8 months after the incident, the appellant was arrested by the police. The appellant had resisted the arrest and in the ensuing struggle had sustained two gunshot wounds on his left foot, when he tried to snatch a police officer's gun. The appellant was charged with the murder of the deceased on 9 March 2003. At the end of the prosecution case, the trial judge found that the prosecution had proved that the deceased had died as a result of the head injuries. After evaluating the circumstantial evidence and the testimonies of the prosecution

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witnesses, namely the tenants, PW4 and the IO the trial judge was of the view that it was the appellant who had caused the injuries and called on the appellant to enter his defence. The appellant's defence was in essence a denial. In his evidence the appellant denied knowing the tenants or the deceased and claimed that he was working as a security guard in the building where the apartment was located. When questioned as to why he tried to resist arrest, the appellant claimed that he did not know the police wanted to arrest him. After evaluating the evidence for the defence the trial judge found that the appellant had failed to raise a reasonable doubt in the prosecution case and convicted and sentenced him to death under s 302 of the Penal Code. This was the appellant's appeal against his conviction and sentence. The appellant submitted that the case for the prosecution was based on circumstantial evidence, which was not sufficiently strong to establish a prima facie case against the appellant.

Held, dismissing the appeal:

(1) Although there was a lapse of time between the date of the incident and the appellant's arrest, the trial judge had not erred in taking into consideration the appellant's conduct before concluding that the appellant had perpetrated the offence. In the circumstances of this case, the appellant's conduct, which was so violent that it had resulted in him being shot, raised a reasonable inference that he resisted arrest because he knew that he was being arrested for the offence for which he was charged in the present case. The appellant's explanation as to why he resisted arrest was also unreasonable. In any event, the trial judge's conclusion at the end of the case was not based solely on the appellant's conduct at the time of his arrest but was made upon consideration of all the other evidence adduced by the prosecution (see paras 16–17).

(2) The law on circumstantial evidence is well settled. The evidence should irresistibly point to the conclusion of the guilt of the accused. In the present case, the testimonies of the tenants showed that only the appellant was in the apartment shortly before the deceased's body was discovered. It was also in the tenants' evidence that the appellant looked panicky and had left in a hurry after opening the door for them. The trial judge had no reservations in accepting the tenants' evidence and the appellate courts should be slow in interfering with findings of fact in the absence of any misdirection. Further, as the tenants were not interested witnesses, there was no reason to interfere with the trial judge's acceptance and evaluation of their testimonies. The evidence of PW4 as to the condition of the apartment when he entered it also corroborated of the tenants. On a totality of the evidence the evidence pointed irresistibly to the conclusion of the guilt of the appellant and the trial judge had not erred in finding the appellant guilty of the murder as charged (see paras 18–20).

(3) The appellant gave no explanation as to why he appeared panicky or why he left the apartment in a hurry as testified by the tenants. In the absence of any explanation for this conduct a reasonable inference could be drawn that the appellant was culpable of the offence (see para 21).

[Bahasa Malaysia summary

Mayat Lee Ing Mui ('si mati') telah dijumpai terbaring di atas tanah di bahagian belakang bangunan tiga tingkat, terletak di Kuching. Si mati, yang tinggal di tingkat dua bangunan, telah menyewakan bilik di dalam pangsapurinya kepada pasangan ('penyewa-penyewa'). Menurut keterangan yang dikemukakan oleh pihak pendakwaan perayu, bekas penyewa, berada di dalam pangsapuri si mati pada tarikh kejadian tersebut. Penyewa-penyewa memberi keterangan bahawa semasa mereka beredar daripada tempat kerja pada jam 2 pagi, perayu telah membuka pintu ke pangsapuri untuk mereka. Pemergian perayu dalam keadaan panik dan tergesa-gesa menyebabkan penyewa-penyewa mengetuk pintu bilik si mati tetapi tiada jawapan. Kesan darah yang ditemui mereka di dalam pangsapuri juga menyebabkan mereka sangsi sehinggakan mereka menghubungi polis. Ketua Inspektor, yang tiba di pangsapuri ('PW4'), memberikan kenyataan bahawa dia merempuh pintu bilik si mati tetapi tidak menemui si mati di dalam biliknya. PW4 juga menjumpai lumuran darah dan pengelap lantai di dalam bilik tersebut, yang mana telah digeledah. Mayat si mati kemudiannya ditemui di bawah di belakang bangunan. Siasatan telah dilakukan di tempat kejadian jenayah dan antara barang-barang yang ditemui oleh pegawai siasatan ('PS') adalah sebatang kayu sepanjang 2 kaki ('sebatang kayu'), yang mana mungkin merupakan senjata pembunuhan tersebut. Ahli patologi yang menjalankan post mortem mengesahkan bahawa sebab kematian adalah kecederaan pada kepala yang disebabkan oleh impak hentakan kuat daripada objek keras seperti sebatang kayu. Lebih kurang 8 bulan selepas kejadian, perayu telah ditangkap oleh polis. Perayu telah menentang tangkapan dan dalam pergelutan telah menerima dua kesan tembakan di kaki kirinya, apabila dia cuba merampas pistol pegawai polis. Perayu telah dituduh dengan pembunuhan si mati pada 9 Mac 2003. Pada akhir kes pendakwaan, hakim bicara mendapati bahawa pihak pendakwaan telah membuktikan bahawa si mati telah mati akibak kecederaan kepala. Selepas mempertimbangkan keterangan ikut keadaan dan kenyataan-kenyataan saksi-saksi pihak pendakwaan, iaitu penyewa-penyewa, PW4 dan PS hakim bicara berpendapat bahawa perayu telah menyebabkan kecederaan dan memanggil perayu untuk memasukkan pembelaannya. Inti pati pembelaan perayu adalah penafian. Dalam keterangannya perayu menafikan dia mengetahui penyewa-penyewa atau si mati dan mendakwa bahawa dia bekerja sebagai pengawal sekuriti di dalam bangunan tersebut di mana pangsapuri itu terletak. Apabila disoal tentang mengapa dia cuba melawan tangkapan, perayu mendakwa bahawa dia tidak tahu polis ingin menahannya. Setelah mempertimbangkan keterangan untuk pembelaan hakim bicara mendapati bahawa perayu telah gagal untuk menimbulkan

keraguan munasabah di dalam kes pendakwaan dan mensabitkan dan menjatuhkan hukuman mati di bawah s 302 Kanun Jenayah. Ini merupakan rayuan perayu terhadap sabitan dan hukumannya. Perayu berhujah bahawa kes pendakwaan adalah berdasarkan keterangan ikut keadaan, yang mana tidak cukup kuat untuk membuktikan kes prima facie terhadap perayu.

Diputuskan, menolak rayuan:

(1) Meskipun terdapat jarak masa antara tarikh kejadian dan tangkapan perayu, hakim bicara tidak terkhilaf dalam mempertimbangkan tindakan perayu sebelum memutuskan bahawa perayu telah merancang kesalahan tersebut. Dalam keadaan kes ini, tindakan perayu, yang mana sangat ganas telah menyebabkan dia ditembak, menimbulkan inferens berpatutan bahawa dia melawan tangkapan kerana dia tahu bahawa dia ditahan untuk kesalahan yang mana dia dituduh di dalam kes ini. Penjelasan perayu tentang mengapa dia melawan tangkapan juga adalah tidak berpatutan. Dalam mana-mana kejadian, kesimpulan hakim bicara pada akhir kes adalah tidak berdasarkan hanya pada tindakan perayu pada masa tangkapannya tetapi dibuat berdasarkan pertimbangan kesemua keterangan lain yang dikemukakan oleh pihak pendakwaan (lihat perenggan 16–17).

(2) Undang-undang keterangan ikut keadaan adalah tetap. Keterangan seharusnya menunjukkan kepada kesimpulan tentang kesalahan tertuduh. Dalam kes ini, kenyataan penyewa-penyewa hanya menunjukkan bahawa perayu berada di dalam pangsapuri sejurus sebelum mayat si mati ditemui. Adalah menjadi keterangan penyewa-penyewa bahawa perayu kelihatan panik dan meninggalkan tempat dalam keadaan tergesa-gesa selepas membuka pintu untuk mereka. Hakim bicara tidak teragak-agak untuk menerima keterangan penyewa-penyewa dan Mahkamah Rayuan seharusnya berhati-hati untuk campur tangan dapatan fakta dengan sekiranya tiada sebarang salah arah. Selanjutnya, memandangkan penyewa-penyewa bukanlah saksi-saksi berpengaruh, tidak terdapat apa-apa sebab untuk campur tangan dengan penerimaan hakim bicara dan pertimbangan kenyataan-kenyataan mereka. Keterangan PW4 berkenaan dengan keadaan pangsapuri apabila dia masuk juga menyokong keterangan penyewa-penyewa. Berdasarkan keseluruhan keterangan, keterangan menunjukkan kepada kesimpulan tentang kesalahan perayu dan hakim perbicaraan tidak khilaf dalam mendapati perayu bersalah melakukan pembunuhan seperti yang dipertuduh (lihat perenggan 18–20).

(3) Perayu tidak memberikan sebarang penjelasan mengapa dia kelihatan panik atau mengapa dia meninggalkan pangsapuri dalam tergesa-gesa seperti yang dinyatakan oleh penyewa-penyewa. Dalam ketiadaan

apa-apa penjelasan tentang kelakuan ini inferens berpatutan telah dibuat bahawa perayu adalah bersalah untuk kesalahan tersebut (lihat perenggan 21).]

Notes

For cases on s 300 of the Penal Code, see 4(2) *Mallal's Digest* (4th Ed, 2012 Reissue) paras 1766–1794.

Cases referred to

Chang Kim Siong v PP [1968] 1 MLJ 36; [1967] 1 LNS 18, FC (refd)
Khairuddin bin Hassan v PP [2010] 6 MLJ 145; [2010] 7 CLJ 129, FC (refd)
Lim Kheak Teong v PP [1985] 1 MLJ 38, FC (refd)
Magendran a/l Mohan v PP [2011] 6 MLJ 1; [2011] 1 CLJ 805, FC (refd)
PP v Megat Shahrizat bin Megat Shahrur [2013] 3 MLJ 227; [2011] 8 CLJ 893, FC (refd)
Thomas v Thomas [1947] AC 484, HL (refd)

Legislation referred to

Evidence Act 1950 ss 8(2), 9
Penal Code ss 300, 300(d), 302

Appeal from: Criminal Trial No 45–06 of 2006-III/I (High Court, Kuching)

Anthony Tai (Anthony Tai Advocates) for the appellant.
Awang Armadajaya bin Awang Mahmud (Deputy Public Prosecutor, Attorney General's Chambers) for the respondent.

Aziah Ali JCA:

[1] The High Court at Kuching convicted and sentenced the appellant to death under s 302 of the Penal Code for the murder of one Lee Ing Mui ('the deceased') on 9 March 2003 at about 2am at a house No 277, Lot 409, 2nd Floor, Lorong 11, Jalan Ang Cheng Ho, Kuching. We heard his appeal against his conviction and sentence. Having considered the appeal records and the submissions made, we were unanimous in our decision that the appellant's appeal be dismissed and his conviction and sentence be affirmed for the reasons stated below.

BRIEF FACTS

[2] Briefly the evidence led by the prosecution shows that at the material time the deceased stayed on the second floor of a three storey building. The deceased's son PW7 was staying in Brunei. On 10 March 2003 at about 2am he received a call from his friend in Kuching who informed him that a woman

who is probably his mother had been killed. PW7 returned to Kuching and went to the hospital mortuary with his cousin. At the hospital he identified the deceased as his mother. He then lodged a police report (exh P22). According to PW7 the deceased had told him that she had rented out her place to a couple.

[3] PW3 Teroman @ Drahman and PW2 Supih ak Tunai were the deceased's tenants at the material time. They rented a room in the apartment and paid rental to the deceased who they called 'aunty'. According to them the appellant was also a tenant but had moved out before the date of the incident.

[4] On 8 March 2003 both PW3 and PW2 left for work at about 8pm and they saw the deceased lying down in her room. She was alone. They returned from work at about 2am and saw that the light in the apartment was on. PW3 said he saw the shadow of a person at the window of the apartment. Both then walked up the stairs to the apartment which was on the upper floor. The appellant opened the iron grill door to the apartment for them. They asked the appellant what he was doing in the apartment and the appellant replied that he wanted to take his things. But according to PW2 and PW3 the things that the appellant had wanted to take belonged to the deceased. PW2 said the appellant looked panicky. PW3 said the appellant left in a hurry after opening the grill door.

[5] PW2 then went to the deceased's room to find out why the appellant wanted to take her things. But there was no answer when she knocked on the door. PW2 noticed that the floor of the walkway to the kitchen was wet as if it had been washed. PW2 said there was a smell of blood and she saw some blood in the washroom. PW3 also noticed that the floor was wet. PW3 went to the kitchen sink and he saw some blood there. Both PW2 and PW3 realised that something was wrong and PW3 contacted PW4 Chief Inspector Abdul Rahim bin Abdullah. PW4 testified that he went to the apartment and checked the rooms. He smelt something like blood and found the floor wet as if it had been recently mopped. In the toilet there were some traces of blood under a bucket. He went to the room from where the smell of blood was very strong and forced open the door. In the room he found a pool of blood and a mop. He noticed that the room had been ransacked. But he did not find the deceased's body. PW4 also noticed traces of something which had been pulled on the floor from the victim's room right to the kitchen window. He then went downstairs to the back portion of the building and found the deceased's body on the ground. Together with his personnel they searched the area for the appellant but he was nowhere to be found.

[6] PW13 DSP Mohd Zaini bin Che Din was the investigating officer ('IO'). He conducted an investigation at the scene of the crime and among the items he recovered from the house was a piece of wood about two feet in length

(exh P15). He took the items seized and kept them in a cabinet inside his room at his office. On 6 May 2005 several items including the piece of wood exh P15 were sent to the chemist PW5 Hasnah bt Hussin for analysis. She performed DNA profiling analysis on exh P15 which bore human blood stains but the analysis was unsuccessful. She said the reason could be due to deterioration of the blood stains. She testified that DNA samples can be destroyed if kept in places which are too cold or too hot or for a long time.

[7] PW11 Supt Amidon bin Anan, the Head of the Crime Scene Investigation of The Royal Malaysia Police visited the scene and examined the photographs taken. He prepared a report (exh P24). PW11 testified that based on the blood splatters found at the scene, the deceased was struck twice on the head with a blunt object like exh P15 or some other heavy object could have caused those injuries. He opined that the injuries were unlikely to have been caused by a fall.

[8] The pathologist PW6 Dr Jamil bin Dolkadir @ Abdul Kadir performed the post-mortem on the deceased and prepared the autopsy report (exh P21). PW6 found the following external injuries on the deceased:

(a) dislocation of the left elbow joint;

(b) bruises on the anterior neck;

(c) bruises on the posterior left knee;

(d) small laceration at middle upper and lower lips;

(e) laceration at the vertex extending to right temporal area measuring 14cm long, 5cm wide and up to the skull bone deep;

(f) laceration at posterior left temporal area measuring 6cm long, 3cm wide and up to the skull bone deep;

(g) laceration at right occipital measuring 6cm long, 1cm wide and up to the skull bone deep; and

(h) laceration at the left frontal area measuring 3cm long, 0.5cm wide and up to the skull bone deep.

Injuries number (d)–(h) were all to the head. They were caused by impact with very severe force from a hard object. The injuries were fatal in nature. The piece of wood exh P15 or a metal pipe could possibly cause the fatal injuries. The cause of death was head injury with subdural haemorrhage due to blunt object. According to PW6 the chances of survival was slim. In cross-examination PW6 agreed that the external injuries could also be caused by a fall on a hard object. PW6 could not differentiate which of the injuries to the head was due to a fall and which one was due to a blow. An internal examination revealed a close fracture of the right collar bone and multiple fractures of the left rib bones.

[9] Approximately eight months after the incident, on 25 November 2004 PW12 DSP Wong Chee Kiong together with PW13 and other police personnel arrested the appellant after a struggle. During the arrest the appellant tried to snatch a gun from one of the police officers as a result of which the police officer shot the appellant. The appellant sustained two gunshot wounds on his left foot. After his arrest the appellant was sent to the hospital. PW12 then lodged a police report (exh P27). PW15 Chief Inspector Soliment Nyian then took over the investigation. According to PW15 the appellant was also wanted for other offences but on 25 November 2004 his arrest was in respect of this offence.

FINDINGS BY THE HIGH COURT

[10] At the end of the prosecution case the learned trial judge made a maximum evaluation of the prosecution evidence and found that the prosecution has proved that the deceased died as a result of the head injuries inflicted on her with severe force by the use of exh P15 which resulted in severe bleeding and eventually led to the death of the deceased. In coming to his finding that it was the appellant who had caused the injuries which resulted in the deceased's death, the learned trial judge evaluated the circumstantial evidence and the testimonies of PW2, PW3, PW4 and PW11 and considered the following facts:

(a) the deceased was known to both PW2 and PW3;

(b) the appellant was known to PW2 and PW3 as 'Tony';

(c) the appellant had moved out from the apartment approximately one week prior to the date of the incident;

(d) both PW2 and PW3 returned to the apartment after work and saw the appellant inside the apartment trying to remove some household things which belonged to the deceased;

(e) the grill door to the apartment was locked and the appellant opened the said door for PW2 and PW3;

(f) the appellant left in a hurry without taking anything;

(g) both PW2 and PW3 described the appellant as panicky, scared and in a hurry to get out of the house and he left barefooted;

(h) both PW2 and PW3 found the floor wet as if it had been cleaned recently;

(i) they knocked on the deceased's room door but received no answer;

(j) PW2 and PW3 discovered some blood in the washroom and the kitchen;

(k) both sensed that something was wrong and called PW4;

(l) they then knocked on the deceased's room door and since there was no reply, PW3 and PW4 forced open the room door and saw a lot of blood on the room floor;

(m) the deceased was not in the room;

(n) PW4 confirmed that the floor of the apartment was wet and saw traces on the floor as if someone had been dragged from the deceased's room to the kitchen window;

(o) PW4 then discovered the deceased's body lying on the ground at the back portion of the apartment;

(p) the evidence of PW11 which was hardly challenged which had established that the deceased did not commit suicide and that her death was not caused by the fall from the apartment;

(q) the appellant had resisted arrest; and

(r) both PW2 and PW3 had identified the appellant in court.

[11] The learned trial judge found that the injuries inflicted on the deceased were so imminently dangerous that they must in all probability cause death as provided under s 300(d) of the Penal Code. The learned judge found that the prosecution had established a prima facie case and called on the appellant to enter his defence.

[12] The defence was in essence a denial. In his evidence-in-chief the appellant denied knowing PW2 and PW3 or the deceased. He denied having stayed in the apartment. He said that at the material time he worked as a security guard. The building where the apartment was located was under his security area. On the night in question he was having drinks with his friends when they heard noises coming from the building. He went there with three other friends named Rantai, Lingga and Jemap. He found a few women and men at the staircase downstairs. He went upstairs to open the gate to the apartment. At that time some women and men came upstairs so he did not open the gate. He then went to approach the women and men downstairs but these people ran away. He then went back to his place of work. In cross-examination the appellant said that the noises he heard sounded like people hitting something. When he was asked as to why he tried to run away when the police wanted to arrest him, the appellant said that he did not know that the police wanted to arrest him.

[13] The learned trial judge evaluated the evidence for the defence and the evidence adduced by the prosecution and found that the appellant had failed to

raise a reasonable doubt in the prosecution case for the following reasons:

(a) the two prosecution witnesses, PW2 and PW3 were independent witnesses whose testimonies were straightforward and not dented in cross-examination;

(b) there was no evidence that either or both of them had any grudge against the appellant to incriminate him with the offence;

(c) the learned trial judge disbelieved the appellant when he said he did not know PW2 and PW3;

(d) none of the friends who allegedly were with the appellant at the material time came to testify and the presence of these three persons was never put during the prosecution case;

(e) the appellant's evidence that he did not open the gate of the apartment to investigate was unreasonable since he was a security guard for that area and as such it should have been instinctive for him to properly investigate the noise coming from that area;

(f) the learned trial judge did not believe the appellant's testimony that he could not recognise the building when the said building was under his supervision; and

(g) the learned judge was of the view that the absence of DNA profiling to link the murder weapon to the appellant as raised by defence counsel could be explained by the appellant's act of washing away the deceased's blood and because the accused was arrested about eight months after the incident.

THE APPEAL

[14] Learned counsel in his oral submissions before us submitted that the learned judge had erred in his findings and conclusions that the prosecution had proved its case beyond reasonable doubt. Learned counsel took issue with the learned judge's finding as expressed at p 171 of the appeal records as follows:

> Finally the manner in which the accused was arrested is also relevant to my deliberation. The accused was attempting to escape when he was confronted by the police party led by PW12. In fact he resisted arrest and attacked one of the police officers and attempted to take his gun. In reaction to such resistance, the policer shot the accused twice on his legs. Section 8 of the Evidence Act allows the court to consider the implication of the accused's attempt to escape. But to draw any adverse inference the Court must ensure that there is a nexus between the conduct of the accused to escape and the offence in question. Though there is no evidence to that effect, I am of the view that the fact that the accused had reacted in a manner that he did corroborates the other evidence. No innocent man would react to a police party

in such a violent manner. Accordingly I find that the prosecution had proved that it was the accused who had caused the injuries to the deceased.

[15] Learned counsel raised the issue of proximity of the offence and the date the appellant was arrested. It was submitted that the appellant was arrested about eight months after the incident. Counsel referred to the testimony of PW12 (p 125 of appeal records) where PW12 in cross-examination agreed that the raid carried out which resulted in the appellant's arrest was not just for the present offence. It was submitted that the learned trial judge had failed to consider that the appellant could have tried to escape because of his other crimes. Learned counsel submitted that the learned judge had arrived at his decision in the absence of judicial appreciation of the evidence even though His Lordship found no nexus between the appellant's conduct and the offence. Thus it was submitted that the learned judge had erred in finding that there was a prima facie case established.

[16] We agreed with learned counsel that there was a lapse of time between the date of the incident and the appellant's arrest. However we were unable to agree with learned counsel that the trial judge had erred in taking into consideration the appellant's conduct and thereafter concluding that the appellant had perpetrated the offence. We were of the view that in the circumstances of this case, what merits consideration is whether the appellant's conduct was influenced by the offence for which he was charged. Section 8(2) of the Evidence Act 1950 states as follows:

> (2) The conduct of any party, or of any agent to any party, to any suit or proceeding in reference to that suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and *the conduct of any person an offence against whom is the subject of any proceeding, is relevant if the conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.* (Emphasis added.)

[17] We had perused the testimony of the appellant and we find that the explanation given by the appellant for resisting arrest was because he did not know that the police had wanted to arrest him as unreasonable. His conduct was so violent that it resulted in him being shot. Why would the appellant retaliate in such an aggressive manner unless he knew that the police had wanted to arrest him for this particular offence? Even if his explanation was true, we were of the view that his violent and aggressive conduct was inconsistent with the conduct of a reasonable person who had no idea why the police had wanted to arrest him. We agreed with the submissions by the learned deputy public prosecutor that the violent manner in which the appellant resisted arrest to the extent that he ended up being shot was extraordinary. We were of the view that the conduct of the appellant at the time of his arrest raises a reasonable inference that he resisted arrest because he knew that he was being

arrested for the offence for which he was charged in the present case. In any event we find that the conclusion of the learned judge at the end of the case was not based solely on the appellant's conduct at the time of his arrest but was made upon consideration of all the other evidence adduced by the prosecution.

[18] It was submitted by learned counsel that the case for the prosecution was based on circumstantial evidence which was not sufficiently strong to establish a prima facie case against the appellant. The law on circumstantial evidence is well settled. The evidence must point irresistibly to the conclusion of the guilt of the accused. If there are gaps in it, then it is not sufficient (*Chang Kim Siong v Public Prosecutor* [1968] 1 MLJ 36; [1967] 1 LNS 18 (FC)). If the evaluation of the evidence results in doubts in the prosecution's case, then a prima facie case has not been made out. The defence ought not to be called merely to clear or clarify such doubts (*Magendran a/l Mohan v Public Prosecutor* [2011] 6 MLJ 1; [2011] 1 CLJ 805 (FC)). The standard of proof is beyond reasonable doubt and not any higher standard. The burden is on the prosecution to adduce evidence to sufficiently provide the necessary ingredients to satisfy the requirements of the special degree of mens rea referred to in s 300 of the Penal Code, (see *Public Prosecutor v Megat Shahrizat bin Megat Shahrur* [2013] 3 MLJ 227; [2011] 8 CLJ 893 (FC)).

[19] The evidence shows that PW2 and PW3 testified that they knew the appellant prior to the incident as according to them the appellant was a tenant who had moved out about one week before the date of the incident. They testified that at the time they left the apartment for work, only the deceased was in the apartment. When they returned from work, they saw the appellant in the apartment. Thus there is uncontroverted evidence that only the appellant was in the apartment shortly before the deceased's body was discovered. It was also their evidence that the appellant looked panicky and left in a hurry after opening the grill door for them. Upon entering the house they found the floor was wet as if it had been cleaned. They also found traces of blood in the house. They did not find the deceased in the house. The trial judge had no reservations in accepting the evidence of PW2 and PW3 and gave weight to their evidence. It is trite that appellate courts are slow in interfering with findings of fact made by the trial court which would generally be respected, in absence of any misdirection, as the trial judge would have had the opportunity to scrutinise the demeanour of the witnesses during trial (*Lim Kheak Teong v Public Prosecutor* [1985] 1 MLJ 38; *Thomas v Thomas* [1947] AC 484). We agreed with the learned judge that both PW2 and PW3 were not interested witnesses with any grudge against the appellant. There is no evidence that they had any purpose of their own to serve. We find no reason to interfere with His Lordship's acceptance and evaluation of their testimonies. The evidence of PW4 corroborated the evidence of PW2 and PW3 that the floor of the apartment was wet as if it had been recently mopped. PW4 found some traces

of blood under a bucket in the toilet. He forced open the door to the deceased's room and found a pool of blood and a mop in the room which appeared to have been ransacked. He also noticed traces of something which had been pulled on the floor from the victim's room right to the kitchen window. It was PW4 who found the deceased's body lying on the ground at the back of the building.

[20] The learned judge upon evaluation of the evidence was satisfied that this case falls under s 300(d) of the Penal Code which states:

> Except in the cases hereinafter excepted, culpable homicide is murder
>
> (a) …
>
> (b) …
>
> (c) …
>
> (d) if the person committing the act knows that it is imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death, or such injury as aforesaid.

PW11 testified that based on the blood splatters found at the scene, the deceased was struck twice on the head with a blunt object. The injuries inflicted on the deceased's head were all fatal in nature. The pathologist PW6 testified that the injuries were due to very severe force. In our considered view the appellant must have known that hitting the deceased's head with severe force using the piece of wood exh P15 was an imminently dangerous act that must in all probability cause such bodily injury as is likely to cause death. If death is an imminent result of the appellant's act, it falls under s 300 of the Code, (see *Public Prosecutor v Megat Shahrizat bin Megat Shahrur*). We find that the learned judge had not erred in his finding that this case falls under s 300(d) of the Code. On a totality of the evidence we find that the evidence point irresistibly to the conclusion of the guilt of the accused.

[21] Further we wish to refer to the uncontroverted evidence of PW2 and PW3 who testified that the appellant looked panicky and left in a hurry after opening the apartment's grill door for them. In a case where the appellant's act of flight had a direct bearing on the offence he faced, he must satisfy the trial court why he reacted in that manner in order to rebut any inference detrimental to his defence. The explanation becomes a relevant fact under s 9 of the Evidence Act 1950 (see *Khairuddin bin Hassan v Public Prosecutor* [2010] 6 MLJ 145; [2010] 7 CLJ 129 (FC)). The appellant herein gave no explanation why he appeared panicky or why he left the apartment in a hurry as testified by PW2 and PW3. We were of the view that in the absence of any explanation for this conduct a reasonable inference can be drawn that the appellant was culpable of the offence.

[22] Having considered the prosecution evidence we find that the prosecution had adduced evidence that is sufficiently strong enough to establish beyond reasonable doubt that it was the appellant who had caused the fatal injuries on the deceased. In our considered opinion the learned trial judge had not erred in finding that the appellant was guilty of murder as charged. For the reasons stated above we dismissed his appeal and affirmed the conviction and sentence.

Appeal dismissed.

Reported by Kohila Nesan